

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

No. 1:79-cv-988-LJV

-v-

HOOKER CHEMICAL CORP., et al.,

Defendants.

STATUS REPORT

Plaintiff United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), hereby submits an updated status report in the above-captioned case, as previously directed by the Court. This status report updates the prior status reports filed by Plaintiff on July 1, 2019 (Doc. 349), September 27, 2019 (Doc. 353), January 28, 2020 (Doc. 355), May 29, 2020 (Doc. 357), December 14, 2020 (Doc. 359), June 14, 2021 (Doc. 361), and December 17, 2021 (Doc. 363). This report appears to have been due by June 20, 2022, but the docket entry received from the court after the previous status report was submitted stated that the due date was to be June 20, 2021. Undersigned counsel failed to notice this error and incorrectly docketed the due date on his calendar. Counsel apologizes for the delay in submitting this report.

As previously reported to the Court, EPA and the New York Department of Environmental Conservation (“DEC”) have been evaluating a proposal made by Occidental Chemical Corp. (“OCC”) to use extraction of dense non-aqueous phase liquids (“DNAPL”) from the contaminated groundwater plume associated with the Superfund site that is the subject of this case as an alternative to placement of a grout curtain to contain DNAPL migration from the site, which was a component of the original remedy to be implemented in this case. It had been

decided and agreed by all parties that a pump test was necessary to provide answers to certain remaining questions raised by EPA and DEC regarding OCC's extraction proposal.

Based on the pump test that was performed by OCC's environmental contractor in April 2020, and the Migration Evaluation Report submitted to EPA and DEC in December 2020, it was determined by EPA and DEC that additional field work would be needed to make a determination that the DNAPL extraction remediation being conducted by OCC is adequately and effectively controlling the migration of the site contamination under the Niagara River without the need for construction of the grout curtain called for in the Stipulation Agreement entered in this case.

After a meeting on August 26, 2021, among representatives of EPA, DEC, and OCC to further discuss their findings and to determine whether OCC would be willing to perform the necessary additional work, OCC agreed to perform the additional work. This additional work includes the installation of additional monitoring wells to fill data gaps, improve monitoring, and supplement past calculations, and subsequent pumping tests to determine the effects of the pumping across the more extensive monitoring network. EPA and DEC requested that OCC submit a work plan for the additional work for approval by the agencies.

OCC submitted its 'Work Plan for Additional Shallow Bedrock NAPL Recovery System Investigation, S Area Landfill Site' (the "Work Plan") in early 2022. On March 31, 2022, EPA and DEC provided their written comments on the Work Plan to OCC, and on May 12, 2022, OCC responded to the EPA and DEC comments. By letter dated June 10, 2022, EPA and DEC tentatively approved the Work Plan, subject to some additional comments and requests that were provided in the approval letter, and requested that OCC submit a final Work Plan incorporating the additional input for final agency approval.

On July 11, 2022, OCC responded to the June 10 comments provided by EPA and DEC and submitted a final Work Plan. The final Work Plan was approved by the agencies on August 3, 2022. EPA and DEC will require a weekly update of the DNAPL investigation effort while the fieldwork is being conducted. The content of this update will be work accomplished that week, problems encountered, and a description of work planned for the following week.

The tasks to be accomplished under the approved Work Plan are the following:

- NAPL sampling for physical and chemical characterization was completed on August 30, 2022.
- The analytical results as well as the historic and current overburden and shallow bedrock NAPL characterization is to be submitted as a technical memorandum by October 31, 2022.
- Monitoring well installation is scheduled to commence in October/November 2022, to be completed in February 2023, with overdrilling of OW806 and installation of the monitoring wells closest to the bike path to be completed first.
- Conversion of OW806 to a recovery well (mechanical and electrical) is scheduled to be completed by the end of February 2023.
- Pumping tests will be conducted during the spring of 2023.
- A report presenting data, findings, and conclusions based on the work performed under the Work Plan is scheduled for submission to EPA and DEC by July 31, 2023.

It is anticipated that a decision regarding the need for construction of the grout curtain will be possible based on the results of the additional work called for under the Work Plan following submission of the final report in July 2023.

As indicated in the status reports that have previously been submitted to the Court, this project continues to progress smoothly and the parties' interactions have been cooperative. The project may well move forward without the need for judicial involvement in the process, but this

cannot be ruled out entirely. The parties will await the Court's determination concerning continuation of this matter on the Court's docket.

Respectfully submitted this 28th day of September, 2022.

s/ Steven A. Keller
U.S. Department of Justice
Environmental Enforcement Section/ENRD
P.O. Box 7611
Washington, DC 20044
(202) 532-3309
steve.keller@usdoj.gov

OF COUNSEL:

James Doyle
Henry Guzman
US Environmental Protection Agency
Office of Regional Counsel – Region 2
290 Broadway
New York, NY 10007

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that on this 28th day of September, 2022, copies of the foregoing were served by United States Postal Service on the following parties at the last-known address of their counsel in this matter:

Michael J. Russo
Assistant Attorney General
State of New York
Main Place Tower, Suite 300A
350 Main Street
Buffalo, NY 14202

Counsel for the State of New York

Martin B. Wasser
Phillips Nizer, LLP
485 Lexington Avenue
New York, NY 10017

Counsel for Occidental Chemical Corp.

s/ Steven A. Keller
Counsel for the United States